Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

WILLIAM M. WINDSOR,
Petitioner

v.

MAID OF THE MIST CORPORATION, MAID OF THE MIST STEAMBOAT COMPANY, LTD., AND JUDGE ORINDA D. EVANS,
Respondents

On Petition for Writ of Mandamus
To The United States Court of Appeals for The Eleventh Circuit

PETITION FOR WRIT OF MANDAMUS

TO DISQUALIFY JUDGE ORINDA D. EVANS

William M. Windsor
Pro Se
PO Box 681236
Marietta, GA 30068
770-578-1094

QUESTIONS PRESENTED

1. Whether pervasive bias requires disqualification/recusal of Judge Orinda D. Evans.

2. Whether Judge Evans must be stopped from ignoring the facts and the law.

3. Whether The Supreme Court cares if parties, attorneys, and judges lie, cheat, and break all the rules.

4. Whether The Supreme Court will stop a woman who commits crimes from the bench from continuing to serve as a federal judge.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 Petitioner states the following:

This petition is filed on behalf of an individual.

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JURISDICTION

This Court is authorized to issue a Writ of Mandamus pursuant to 28 U.S.C.§1651(a) in aid of its respective jurisdiction under 28 U.S.C.§1254.

STATUTES INVOLVED

This case involves 28 U.S.C. § 144, 28 U.S.C. § 455, the United States Constitution and the First, Fifth, Sixth, Eighth and Fourteenth Amendments, the Code of Judicial Conduct, and this Court's Supervisory Powers.

STATEMENT OF THE CASE

A. Jurisdiction Below

The United States District Court for the Northern District of Georgia has subject matter jurisdiction over Civil Action No. 1:06-CV-0714-ODE ("MIST-1") [2] pursuant to 28 U.S.C.§1331, which confers original jurisdiction for actions arising under the laws of the United States.

The United States Court of Appeals for the Eleventh Circuit had jurisdiction pursuant to the All Writs Act, 28 U.S.C.1651(a) as does this Court.

B. Statement of Facts[3]

The underlying civil action is one in which Judge Evans, several attorneys, and five witnesses lied again and again and again to improperly cost Windsor approximately $1.5 million in legal fees and litigation expenses and much more. (MIST-1_Doc.364 - Dec#12:¶¶12007-12014.) Judge Evans ignored all of the wrongdoing and actively participated in it. (See Pet.App.pp.1-528.)

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[2] Citations are provided herein to three dockets. Civil Action No. 1:06-CV-0714-ODE is "MIST-1." Civil Action 1:09-CV-01543-WSD is the "Deposition Action." Civil Action No. 1:09-CV-02027-WSD is "MIST-2."

[3] These facts are uncontroverted. This "Statement of Facts" is supported by sworn affidavits that have been filed in 2009 and 2010 by the Petitioner. None of this has been disputed in any manner by affidavits or testimony of any of the Respondents in any civil action.

Maid's managers committed hundreds of counts of perjury and have conspired with their attorneys to commit fraud upon the courts. (MIST-1_Doc.377-Amended_Dec#3,Exh.1-28.) 46 of the 50 paragraphs in the Verified Complaint were false or incorrect and/or not based upon the personal knowledge of Glynn. (Third Amended Declaration of William M. Windsor ("Amended Dec #3") – MIST-1_Doc.377--Exh.1-pp.1-158,Exh.2.) (See Pet.App. pp.26-28.) Judge Evans ignored it all and claimed there was no proof when anyone who can read can see the overwhelming proof.

The Eleventh Circuit has participated in covering up all of the wrongdoing by Judge Evans, the most basic rights of Windsor were obliterated. (See Petition for Writ of Mandamus to Disqualify the Judges of the Eleventh Circuit, sent to this Court for filing on November 5, 2010.)

The lies, false sworn pleadings, false pleadings, discovery abuse perjury, subornation of perjury, obstruction of justice attorney misconduct, judicial misconduct, and corruption continues to this day. Evidence consists of the entire Docket, especially MIST-1_Docs.377-378-462-361-362-363-364-368-374-381-383-385-474-511-515-561-569-571. Windsor would provide all of this evidence to this Court, but to be honest, he simply cannot afford to do so. The printing of 40 copies of multiple volumes is simply unaffordable. If the Court cannot review the documents in Pacer, Windsor is filing a motion to ask if he can submit 40 CD-ROMS. (See Pet.App. pp.35-36.)

On May 11, 2006, Judge Evans signed an Order Granting Preliminary Injunction (the "PI Order"). (Pet.App.540;MIST-1_Doc.33.) The PI Order contains as many as 39 false statements. As many as 17 of these statements are proven false by the testimony of Maid's managers. (MIST-1_Doc.377-Amended_Dec#3-Exh.9;pp.1-81.) (See Pet.App.-pp.47-57.) Judge Evans had the evidence before her, so she was obligated to know the facts. Judge Evans was subsequently advised by Windsor that sworn affidavits from customers proved that the alleged proof of $100 in damages to "justify" the PI had been proven false, but Judge Evans did nothing. (MIST-1_Doc.174;p.31.)

On August 8, 2007, Judge Evans signed a Summary Judgment Order ("SJ Order"). (Pet. App. 572;MIST-1_Doc.251.) As many as 210 of the 416 statements by Judge Evans are false or incorrect or are conclusions based on false statements. (MIST-1_Doc.377-Amended_Dec#3-Exh.22;pp.1-184.) (See Pet.App.pp.101-173.) Judge Evans claimed in the SJ Order that she rejected the statements of fact presented by the parties, so she drafted the facts based on the evidence. (Pet.App.572;MIST-1_Doc.251;p.3.) Judge Evans invented facts and made statements that are proven to be false by the evidence. (MIST-1_Doc.377-Amended_Dec#3, Exh.22.)(See Pet.App.-pp.101-173.)

Judge Evans has shown pervasive bias against Windsor from the first day that she became aware of this lawsuit. Motions have been denied because of the bias, not based upon the merits or law. (See Pet.App.pp.1-528.)

Judge Evans has twisted the law, rules, and facts to accomplish personal desires and cover up her wrongs and the wrongs of Maid's attorneys and Maid's managers. Windsor filed a verified complaint against Judge Evans in Civil Action No. 1:09-CV-02027-WSD ("MIST-2") on July 27, 2009. Violations by Judge Evans are listed throughout MIST-1_Doc.462 and are highlighted in ¶¶2609-2682 of the Verified Complaint (MIST-2_Doc.1). (See Pet.App. pp.1-528.)

Undeniable proof of false statements in the orders has been documented. These were material false statements made under the Judge's oath of office in a federal proceeding. Judge Evans knew statements that she made were false because she claimed statements were evidence before the Court, and that was clearly not true.

Furthermore, Judge Evans was on notice that Maid's statements were false because Windsor informed her at a hearing on February 2, 2007. [MIST-1_Doc.174,P.23:24-25,P.24:1-7,P.34:4-7,P 44:6-8.] Judge Evans ignored Windsor's claims of perjury, Rule 11 violations, and subornation of perjury. Judge Evans issued orders and the judgment based upon perjured testimony. [MIST-1_Doc.361¶¶55-56.] (See Pet.App.pp.78-81.)

Judge Evans has committed obstruction of justice. This is explained in Docket 361¶¶9-12 and Exhibits 2 and 3. (See Pet.App.pp.3,6,8,10,15.19,196-202,228,251,254.256,259,265.)

The pervasive bias and improper actions of Judge Evans have continued. On May 22, 2009 in Doc.390 ("Recusal Order") (Pet.App.626), Judge Evans made many false statements. Judge Evans stated under oath as a judge that there is no evidence of bad faith by Maid and Maid's attorneys. She stated that Windsor's motion "is entirely lacking in substantive merit." But close to 2,000 pages of sworn testimony and evidence was submitted, and it was not controverted by Maid. Judge Evans lied.

Windsor 's first motion to recuse was filed on April 24, 2009. [MIST-1_Doc.361] and denied on May 22, 2009 [MIST-1_Doc.390–Pet.App.626]. Windsor filed Appeal No. 09-13086-DD, and the Eleventh Circuit denied the appeal sua sponte claiming it was FRIVOLOUS. The appeal was anything but frivolous! Windsor filed a Motion for Reconsideration on September 15, 2009. (See Pet.App.pp.3,8,9,13,14,18-23,195,202-210,218,223, 227,228,231,231.)

Windsor's Second Motion to Recuse Judge Evans was filed on June 24, 2009. [MIST-1_Doc.406]. Windsor's Third Motion to Recuse was filed on July 16, 2009. [MIST-1_Doc.470.] These motions were ignored. (See Pet.App.pp.200,201,238,242.)

28 U.S.C.§455 requires that judges recuse themselves sua sponte whenever appropriate. Judge Evans has ignored this obligation as well.

Judge Evans violated Windsor's right to an impartial tribunal. Justices may not sit as adjudicators in cases in which they have an interest,

yet Judge Evans did not disqualify herself.

Detailed background facts regarding professional misconduct of Judge Evans are provided in declarations in MIST-1_Docs.406,462. (See Pet.App.pp.9,10,14,19,22,24,201,219,226,229,241, 242,247, 260,261,263,264,269,270,271.)

The worst of hardships have resulted from the dishonesty in this case. Windsor has lost approximately $1,500,000.00, has been saddled with an injunction that is a violation of Georgia law, has been defamed, and has lost years of man hours fighting the injustice. None of this should have happened. The hardship has been extreme, unexpected, unfair, and illegal. And it continues.

Windsor can prove that federal judges in Atlanta, Georgia are doing everything they can to cover up the illegal acts of Judge Evans and the attorneys in this matter. Windsor has filed a separate Petition for Writ of Mandamus to disqualify all Atlanta federal judges along with a Motion for an Inter-circuit Transfer.

Windsor's sworn declarations under penalty of perjury before a notary have not been controverted with any affidavit of any type. So all of the testimony provided herein and in the Appendix is uncontroverted by any sworn affidavit of any type.

The important factual background is provided in two sworn affidavits. The Declaration dated March 22, 2010 begins on page 1 of Volume 1 of the Appendix. It lists 575 charges of bias in

chronological order. The Declaration dated November 9, 2010 was prepared for this Petition. It begins on page 265 of Appendix Volume 2. It lists an additional 371 charges of bias in chronological order picking up where the earlier affidavit left off.

REASONS FOR GRANTING THE PETITION

I. JUDGE EVANS IS A CORRUPT JUDGE WHO COMMITS CRIMINAL ACTS WHILE HIDING BEHIND HER JUDICIAL ROBE.

There is no reason to beat around the bush and attempt to speak in genteel terms. Judge Evans is an evil person. She has been totally corrupt, and she has violated the Code of Judicial Conduct and the law and has committed crimes intentionally to damage Windsor. Appendix Volumes 1 and 2 are sworn affidavits that reference the evidence.

II. JUDGE EVANS HAS DEMONSTRATED PERVASIVE BIAS, AND PERVASIVE BIAS IS GROUNDS FOR HER DISQUALIFICATION.

The Appendix to this Petition contains 946 charges of bias. Evidence shows the bias began the first day Judge Evans became involved in the case in 2006, and it continues today.

Surely there has never been an action seeking recusal in which the complaining party was able to cite anywhere near this number of documented examples of wrongdoing and bias.

Judge Evans has been a federal district court judge for 32 years. There are no excuses.

If the magnitude of what Judge Evans has done does not establish pervasive bias, then there

will never be a case of pervasive bias. This Court must take what will surely be a hard pill to swallow, and stand up and recognize the rampant corruption in the Atlanta federal courts. Judge Evans should not simply be disqualified. She must be referred to a Grand Jury, and she must be referred to Congress for impeachment.

III. NEITHER JUDGE EVANS NOR THE PLAINTIFFS CAN DISPROVE THAT THERE WERE HORRENDOUS VIOLATIONS OF THE LAW, FALSE STATEMENTS IN ORDERS, ERRONEOUS CLAIMS OF LAW, ETC. IN THIS CASE.

Proving this will be relatively easy. Simply ask the Respondents to respond **under oath under penalty of perjury before a notary** to each of Windsor's 946 Bias statements in Appendix Volumes 1 and 2. The Respondents will not be able to risk the new counts of perjury.

IV. JUDGE EVANS IGNORED MOTIONS FOR RECUSAL AND REFUSED TO RECUSE HERSELF.

Proof of bias/misconduct was previously detailed in Docs.361,406,470,462 and in MIST-2_Doc.1.

Judge Evans failed to properly consider the first motion for recusal under 28 U.S.C. 144 and 28 U.S.C. 455.

> "A court must pass on the legal sufficiency of an affidavit," (***Wolfson v. Palmieri***, 396 F.2d 121,122 (2d Cir.1968)), "and all factual allegations must be taken as true." (***Berger v. United States***, 255 U.S. 22,30 (1921), 41 S.Ct. 230, 65 L.Ed. 481 (1921).)

Judge Evans did not consider if the motion was procedurally sufficient or substantively sufficient as required by 28 U.S.C.§144. [Pet.App.628;MIST-1_Doc. 390.] This is a violation of ministerial duties that requires disqualification. (See ***United States v. Day***, 215 F. App'x 975 (11th Cir. 2007) and ***United States v. Sciarra***, 851 F.2d 621,635 (3d Cir.1988).)

Judge Evans erred by claiming Windsor did not enumerate meritorious reasons for a reasonable person to doubt her impartiality.

The Recusal Order says: "Windsor's affidavit gives no foundation for this contention other than that he felt that Judge Evans' rulings are unfair." (Pet.App.628;MIST-1_Doc.390-Pg.5,Footnote-2.)

This is outrageously false. Windsor has shown pervasive bias and dishonesty by Judge Evans, including approximately 200 false statements in the Preliminary Injunction Order and Summary Judgment Order, withholding evidence, obstruction of justice, fraud upon the courts, and violations of due process. Dec#2 (MIST-1_Doc.361) provides 92 pages and 361 paragraphs of meritorious reasons. Amended Dec#3 (MIST-1_Doc.377) contains 28

exhibits with 2,410 pages of sworn testimony with citations showing that Judge Evans made as many as 200 false statements in the PI Order and SJ Order. Dec#6 (MIST-1_Doc.385) provides a long list of reasons. The Motion to Recuse listed 13 categories of reasons. (MIST-1_Doc.361-Dec#2:¶¶9-91.) Windsor has provided uncontroverted proof of false statements in orders. This is not a contention that Windsor feels Judge Evans' rulings are unfair; this is proof that they were wrong and that there was perjury. (See Pet.App.pp.1-528.)

Judge Evans erred by claiming that bias must be extra-judicial.

The Recusal Order claims bias must be extra-judicial. (Pet.App.628;MIST-1_Doc.390:Pg.5, Footnote-2.) Judge Evans has discriminated against Windsor as a pro se party and a male. (MIST-1_Doc.361¶¶84-85;MIST-1_Doc.406 ¶¶27-31.)

However, the distinction of whether actions or comments are categorized as "extra-judicial" is not the determining factor in recusal. The Supreme Court made it clear in 1994 that the source of the impartiality of the court need not necessarily stem from an extra-judicial source:

> "It is wrong in theory...to suggest, as many opinions have, that 'extrajudicial source' is the only basis for establishing disqualifying bias or prejudice. ... it is not the exclusive reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also ... spring[s] from the

facts adduced or the events occurring at trial...." (***Liteky v U.S.***, 510 US 540 (1994).)

Action, Accountability, and the Judiciary -- ***United States Federal Judicial Recusal Reform In a New Century*** by Brian Downing (2001) discusses the "extra-judicial" concept and explains that it was a mistake.

Judge Evans erred by applying the improper standard because her impartiality might reasonably be questioned.

Judge Evans did not apply the proper standard when considering the motion to recuse.

Pursuant to 28 U.S.C.§455(a), a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The standard under §455 is objective and requires the court to ask "whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." (***McWhorter v. City of Birmingham***, 906 F.2d 674, 678 (11th Cir.1990) (citation omitted). ***Bolin v. Story***, 225 F.3d 1234, 225 F.3d 1234 (11th Cir. 09/06/2000).)

Windsor's declarations state very clearly the facts and reasons for the belief that bias and prejudice exists and that there is an appearance of impartiality. Dates, times, places, circumstances, and statements are itemized in Dec#2 (MIST-1_Doc.361) and Dec#7 (MIST-1_Doc.381). (See

MIST-1_Doc.406¶¶21-25 and Exhibit A thereto; and MIST-1_Doc.470).) (See Pet.App.pp.1-528.) Justice Scalia says the law requires that there be no reasonable question, in any informed person's mind, as to the impartiality of the judge. (***Liteky v. U.S.***) Honest, reasonable, informed persons will agree that Judge Evans appears to lack impartiality.

Judge Evans erred by failing to consider that the cumulative effect of the facts presented would be grounds for recusal.

This is a case of pervasive bias. Judge Evans established a position that the Defendants were wrong and that their case didn't matter. (MIST-1_Doc.381-Dec#7:Pgs.13-14; MIST-1_Doc.406-¶¶40-55.)

> "Where a number of facts considered separately would not be grounds for recusal, the cumulative effect of those facts considered together may be a basis for recusal." (See ***In re United States of America***, 441 F.3d 44 at 68 (2006); ***United States v. Mavroules***, 798 F. Supp 61, 65 (D. Mass. 1992).)

> "A district judge, faced with a recusal motion, is also being asked to step outside herself or himself and take the objective view of an informed outsider. That is difficult for even a saint to do. Moreover, the trial judge has been in the heat of the proceedings, and objectivity, though sought, may be elusive. That is especially so when the proponent of the motion to recuse argues that there is actual

bias on the judge's part." (*In re United States of America*, 441 F.3d 44 at 68 (2006).)

"The statutory standard we apply here, that there is no reasonable basis to question the impartiality of the judge, has high aspirations. The standard does not depend on a showing of actual bias. It requires instead that there be no reasonable question, in any informed person's mind, as to the impartiality of the judge. Under § 455(a), 'what matters is not the reality of bias or prejudice but its appearance,' and '[q]uite simply and quite universally, recusal [is] required whenever `impartiality might reasonably be questioned.'" (*Liteky*, 510 U.S. at 548, 114 S.Ct. 1147 (quoting 28 U.S.C. § 455(a)); *see also In re Boston's Children First*, 244 F.3d at 167; *In re United States*, 158 F.3d at 31. "[J]ustice must satisfy the appearance of justice." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) (internal quotation marks omitted).)

Judge Evans erred by improper consideration of recusal under 28 U.S.C. 144.

The affidavit in support of 28 U.S.C. 144 must state the facts and reasons for the belief that bias and prejudice exist. The reasons must be material and stated with particularity. Windsor met this requirement.

"Properly pleaded facts in a § 144 affidavit must be considered as true." (*Christo v.*

Padgett, 223 F.3d 1324,1328,1329 (11th Cir.2000); ***Ray v. Equifax Information Services, LLC***, No. 08-10879 (11th Cir. 04/13/2009).)

"If the judge to whom a timely motion is directed determines that the accompanying affidavit specifically alleges facts stating grounds for recusal under section 144, the legal sufficiency of the affidavit has been established, and the motion must be referred to another judge for a determination of its merits." (***United States v. Azhocar***, 581 F.2d 735, 738-40 (9th Cir. 1978), cert. denied, 440 U.S. 907, 99 S.Ct. 1213, 59 L.Ed.2d 454 (1979) at 738.)

A 28 U.S.C.§144 motion "must be filed with reasonable promptness after the party learns of the facts that may call into question the judge's impartiality." (***Recusal: Analysis of Case Law under U.S.C. §455 and 144***, Page 50, Federal Judicial Center, 2002.)

In April 2009, upon obtaining the contracts that Judge Evans withheld, Windsor finally had independent documentary proof of the bias. The Motion to Recuse was filed as soon as possible thereafter on April 24, 2009 simultaneously with a Motion to Reopen that established a new "proceeding" on day one of the "session" at which the proceeding was to be heard. Windsor met this requirement. (MIST-1_Doc.361; MIST-1_Doc.362.)

The affidavit of prejudice is to be accompanied by a certificate of counsel of record stating that it is made in good faith and attesting to the truthfulness and accuracy. Windsor filed a certificate. Windsor stated in Declaration #1 (MIST-1_Doc.362) filed on April 24, 2009: "I hereby state that my motions and declarations are made in good faith. James W. Penland has filed a motion to withdraw as my counsel." This was signed "William M. Windsor, Pro Se." (MIST-1_Doc.362-Dec#1:¶75.)

The allegations of the certified affidavit must be accepted as true, and Judge Evans was supposed to act in accordance with the mandate of 28 U.S.C.§144 and recuse herself. (***U.S. v. Sykes***, supra at 1339.)

Windsor stated material allegations with particularity.

> "It is the duty of the judge against whom a Section 144 affidavit is filed to pass upon the legal sufficiency of the facts alleged, but neither the truth of the allegations nor the good faith of the pleader may be questioned. Section 144 withdraws from the presiding judge a decision upon the truth of the matters alleged." (***Berger v. United States***, 255 U.S. 22,36, 41 S.Ct. 230,234, 65 L.Ed.481).) ***(See also United States v. Alabama***, 828 F.2d 1532, 1540 (11th Cir.1987), *cert.denied*, 487 U.S. 1210 (1988).)

Windsor complied with the statutory procedure. The facts and allegations of personal bias

in the Affidavit of Prejudice were certainly legally sufficient. The motion was proper, and the Certificate was proper.

Judge Evans erred by claiming that a pro se party was required to file a Certificate of "counsel of record."

The Recusal Order says: "Windsor has failed to file any certificate of counsel of record." (Pet.App.628;MIST-1_Doc.390-Pg.6:15-16.)

Windsor is pro se, so there is no "counsel of record." Windsor was unable to obtain an attorney to represent him due to fear of retribution for taking action against a federal judge. (MIST-1_Doc.381-Dec#7:¶5.)

Stine v. United States, No. V-06-21 (S.D.Tex. 11/07/2008) cites 13 cases, including one federal appellate court decision, stating that a pro se litigant may file the certificate of good faith, signed by himself, indicating that his motion and affidavit are filed in good faith. Windsor did just that.

Judge Evans failed to consider Constitutional grounds for recusal.

Windsor is entitled, under the Constitution and its amendments, the decisions of the U.S. Supreme Court and other federal courts of appeal, and the laws of Congress, to an impartial and fair judge. Judge Evans has violated Windsor's rights guaranteed in the First, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the U.S.

Constitution under color of law. Windsor has been deprived of due process and equal protection under the law. (See ***Peters v. Kiff***, 407, U.S. 493,502 (1972).)

Judge Evans is biased against Windsor because he is pro se. But don't take Windsor's word for it; take the words of Judge Evans:

Judge Evans has discriminated against Windsor because he is pro se. The Court record is now filled with proof of the discrimination against Windsor due to his status as a pro se party. This is extra-judicial bias that has nothing to do with Windsor simply his status before the Court. (See MIST-1_Doc.768--Transcript of Contempt Hearing on April 8, 2010--P.63:15-24,P.64:23-25,P.65:1-25, P.66:1-25,P.67:1-25,P.68:1-25,P.69:1-25,P.70:1-7, P.71:18-25,P.78:16-25,P.79:1-11,P.96:19-22,P.100:7-11,P.101:2-18.)

When Windsor filed a motion in April 2009 and said Judge Evans was biased and should be recused, he didn't have a clue how significant the corruption was. Windsor did at that time say that Judge Evans was biased against pro se parties. This has now been proven in her own words...again...and again...and again. She kept saying at the hearings in 2010 that Windsor should have had an attorney. Windsor wishes he had a video of her saying this. The transcript won't show the venom in her voice and the quickness in her exclamation when Windsor said that "...I don't know what else in the world you could expect of a pro se party to do but to attempt to understand --." She blurted out loud and mean: "Get

a lawyer, that's what you need to do." [MIST-1_Doc.798--Transcript of April 23, 2010 Hearing, P.30:21-25] This is absolute proof of bias. Judge Evans wants everyone to have an attorney because attorneys cannot risk going after her for her criminal acts as they have to protect their careers.

At the conclusion of the April 23, 2010 hearing, Judge Evans stared at Windsor with an evil eye and said "You are playing with fire." [MIST-1 Doc.798,P.109:20-21]

Judge Evans apparently acquired a dislike for the Petitioner because of events outside the instant case. According to ***Liteky***, this is "extrajudicial." Judge Evans ignored this. (Pet.App.628.)

The Petitioner did identify legal and factual errors in MIST-1 that that gave rise to an inference of bias. (See Pet.App.pp.1-528.)

The average reasonable person would doubt that Judge Evans could be impartial.

The impartiality of Judge Evans must be questioned.

The standard for review in recusal is not what Judge Evans thinks; it is what reasonable people think.

> "'A party seeking recusal need not show actual bias on the part of the court, only the possibility of bias . . . Under § 455(a), if a reasonable man, were he to know all the

circumstances, would harbor doubts about the judge's impartiality under the applicable standard, then the judge must recuse.'" *Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 167 (3d Cir. 2004) (quoting *Krell v. Prudential Ins. Co. of Am.* (*In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*), 148 F.3d 283, 343 (3d Cir. 1998)). Moreover, a judge is required to disqualify himself when "he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(b)(1). Bias and prejudice "connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree." *Liteky v. United States*, 510 U.S. 540, 550 (1994).

"Under our precedents there are objective standards that require recusal when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. *Withrow v. Larkin*, 421 U. S. 35,47 (1975). Applying those precedents, we find that, in all the circumstances of this case, due process requires recusal." (*Caperton v. A. T. Massey Coal Co., Inc.*, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (U.S. 06/08/2009).)

> "The probability of actual bias on the part of the judge . . . is too high to be constitutionally tolerable;" (***Berger v. United States***, 255 U.S. 22, (1921), 41 S.Ct. 230, 65 L.Ed. 481 1921)

Liteky v. US actually says that the source of the impartiality of the court need <u>not</u> necessarily stem from an extra-judicial source:

> "It is wrong in theory...to suggest, as many opinions have, that 'extrajudicial source' is the only basis for establishing disqualifying bias or prejudice. It is the only common basis, but not the exclusive one, since it is not the exclusive reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as 'bias' or 'prejudice' because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. ***Liteky v. United States***, 510 U.S. 540, 554-55, 114 S.Ct. 1147, 1157, 127 L.Ed.2d 474 (1994).

> "The fact that an opinion held by a judge derives from a source outside judicial proceedings is not a necessary condition for 'bias or prejudice' recusal...." (***Liteky***, at 554.) Indeed, ***Liteky*** noted approvingly the Court's earlier ruling in ***Berger v. United States***, supra, requiring recusal on the basis of judicial remarks made in a prior proceeding. ***Liteky v. United States***, supra.)

Liteky explained what the Court intended as far as bias. (*Liteky v. U.S.*, 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (U.S. 03/07/1994).) *Liteky*:

> "The fact that an opinion held by a judge derives from a source outside judicial proceedings is not a necessary condition for "bias or prejudice" recusal."
>
> "...neither the presence of an extra-judicial source necessarily establishes bias, nor the absence of an extra-judicial source necessarily precludes bias...."
>
> "...opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible."
>
> **"...there is no per se rule requiring that the alleged partiality arise from an extra-judicial source."** [emphasis added.]
>
> "Grinnell, therefore, provides a less than satisfactory rationale for reading the extra-judicial source doctrine into § 144 or the disqualification statutes at issue here. It should come as little surprise, then, that the Court does not enlist Grinnell to support its adoption of the doctrine."

"...prejudiced opinions based upon matters disclosed at trial may rise to the level where recusal is required."

"From this, the Court is correct to conclude that an allegation concerning some extra judicial matter is neither a necessary nor a sufficient condition for disqualification under any of the recusal statutes."

"A judge may find it difficult to put aside views formed during some earlier proceeding. In that instance we would expect the judge to heed the judicial oath and step down...."

"In matters of ethics, appearance and reality often converge as one. See ***Offutt v. United States***, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954) ("Justice must satisfy the appearance of justice"); ***Ex parte McCarthy***, [1924] 1 KB 256, 259 (1923) ("Justice should not only be done, but should manifestly and undoubtedly be seen to be done"). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. ***Marshall v. Jerrico, Inc.***,446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980) (noting the importance of "preserving both the appearance and reality of fairness," which " 'generates the feeling, so important to a popular government, that justice has been done' ") (quoting ***Joint Anti-Fascist Refugee Comm. v. McGrath***,341 U.S. 123, 172, 95 L.

Ed. 817, 71 S. Ct. 624 (1951) (Frankfurter, J., concurring))."

"Although the source of an alleged disqualification may be relevant in determining whether there is a reasonable appearance of impartiality, that determination can be explained in a straightforward manner without resort to a nearly dispositive extra-judicial source factor. I would apply the statute as written to all charges of partiality, extra-judicial or otherwise, secure in my view that district and appellate judges possess the wisdom and good sense to distinguish substantial from insufficient allegations and that our rules, as so interpreted, are sufficient to correct the occasional departure."

Bias is bias, and when a party does not have an impartial judge, his Constitutional rights have been violated.

"Mandamus is the right and only means to seek review of a judge's refusal to recuse herself." (***United States v. Boyd,*** 208 F.3d 638,645 (7th Cir.2000); ***United States v. Balistrieri,*** 779 F.2d 1191,1204-05 (7th Cir.1985); ***In the Matter of: United States of America***, 398 F.3d 615 (2005).)

Judge Evans did not have judicial authority to commit perjury and obstruction of justice.

Disqualification is justified on grounds that Judge Evans acted without subject matter

jurisdiction in MIST-1 by committing perjury in the PI Order on May 11, 2006 [Pet.App.540;MIST-1_Doc. 33], SJ Order on August 8, 2007 [Pet.App.572;MIST-1_Doc. 251], and Recusal Order on May 22, 2009 [Pet.App.628;MIST-1_Doc. 390]. Judges do not have judicial authority to commit perjury.

> "...not every action by a judge is in the exercise of his judicial function. ... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse. When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect." (***Yates v. Village of Hoffman Estates, Illinois***, 209 F. Supp. 757 (N.D. Ill. 1962).)

Judge Evans has violated several criminal statutes. Windsor has provided proof, and his affidavits have not been controverted; see Docs.361-573. (See Pet.App.pp.1-528;MIST-2_Doc.1.)

V. WINDSOR HAS BEEN DENIED DUE PROCESS, AND HIS CONSTITUTIONAL RIGHTS HAVE BEEN TRAMPLED.

Due process allegedly places limitations on laws and legal proceedings in order to guarantee fundamental fairness, justice, and liberty. Due process has been meaningless with Judge Evans. There are many, many cases that say the right

things, but it doesn't matter when the judges ignore what they say:

> ***Snyder v. Massachusetts***, 291 U.S. 97, 105 (1934); ***Goldberg v. Kelly***, 397 U.S. 254, 267 (1970); ***Palko v. Connecticut***, 302 U.S. 319 (1937); ***Anti-Fascist Committee v. McGrath***, 341 U.S. 123, 168 (1951); ***The Japanese Immigrant Case***, 189 U.S. 86, 100 -101; ***Hagar v. Reclamation District***, 111 U.S. 701, 708.; ***Southern R. Co. v. Virginia***, 290 U.S. 190, 199; ***Brinkerhoff-Faris Co. v. Hill***, supra, 281 U.S. at 682; ***Switchmen's Union v. National Mediation Board***, 320 U.S. 297; ***Tutun v. United States***, 270 U.S. 568, 576 , 577; ***Pennsylvania R. Co. v. Labor Board***, 261 U.S. 72 . 15 ; ***United States ex rel. Knauff v. Shaughnessy***, 338 U.S. 537, 551 (dissenting); ***Pettit v. Penn***, LaApp., 180 So.2d 66, 69; ***Armstrong v. Manzo***, 380 U.S. 545, 552 (1965); ***Fuentes v. Shevin***, 407 U.S. 67, 80 -81 (1972); ***Goldberg v. Kelly***, 397 U.S. 254, 266 -67 (1970); ***Mathews v. Eldridge***, 424 U.S. 319, 343 -45 (1976); ***FCC v. WJR***, 337 U.S. 265, 275 -77 (1949).)

To issue orders and a judgment by the use of testimony that Judge Evans knew to be perjured violated due process. (See ***Mooney v. Holohan***, 294 U.S. 103; ***Pyle v. Kansas***, 317 U.S. 213.) Deprivation of a hearing under these circumstances was a denial of due process of law. (***Durley v. Mayo***, 76 S. Ct. 806, 351 U.S. 277 at 290-291 (U.S. 06/04/1956).)

Windsor's Constitutional rights have been violated again and again. These violations were detailed in 2009 in Windsor's Emergency Motion for Relief from Violation of Constitutional Rights. [MIST-1_Doc. 571.]

VI. THIS CASE PRESENTS AN ISSUE OF VITAL IMPORTANCE TO ALL CITIZENS.

The Constitution guarantees citizens a fair and impartial judge. These are nice words, but this is not the reality experienced by the Petitioner.

Every person "has a constitutional and statutory right to an impartial and fair judge at all stages of the proceeding." (***Liteky v. U.S.***, 510 US 540 (1994).

Unless this Court acts to disqualify Judge Evans, rogue judges will continue to deprive some citizens of their rights.

This is a very important issue of the most basic of Constitutional rights.

VII. THIS CASE BEGS FOR THIS COURT TO EXERCISE ITS SUPERVISORY POWERS BECAUSE THE LOWER COURTS HAVE SO FAR DEPARTED FROM AN ACCEPTABLE COURSE OF PROCEEDINGS.

There likely has never been a case like this that was absolutely dominated by dishonest acts by

the Plaintiffs, their attorneys, and the judges. Cases such as this never reach the appellate courts because attorneys will not represent a party who is taking on a federal judge. The Petitioner knows; every attorney he contacted refused to become involved due to fear of reprisals from the federal judges in Atlanta.

The Petitioner has reviewed a number of Supreme Court cases on the use of supervisory powers. Surely this is a case where the most basic of rights has been violated and must be addressed.

> (See ***McNabb v. United States***, 318 U.S. 332, at 340 (1943); ***Rea v. United States***, 350 U.S. 214, 217 (1956); ***Elkins v. United States***,364 U.S. 206, 222 (1960); ***United States v. Payner***, 447 U.S. 727, 735-736, n. 8 (1980); ***Mesarosh v. United States***, 352 U.S. 1, 9-14 (1956); ***Weeks v. United States***, 232 U.S. 383 (1914); ***United States v. Williams***, 504 U. S. 36, 112 S. Ct. 1735 (U.S. 05/04/1992); ***Cupp v. Naughten***, 414 U.S. 141, 146 (1973); see also ***Barker v. Wingo***, 407 U.S. 514, 530, n. 29 (1972); ***Lehman Brothers v. Schein***, 416 U. S. 386, 393 (1974) (Rehnquist, J., concurring); ***Nguyen v. United States***, 123 S.Ct. 2130, 539 U.S. 69, 156 L.Ed.2d 64 (U.S. 06/09/2003).)

Extraordinary circumstances require that wrongs are righted and that this Court exercise supervisory power. This is one of those cases. The Petitioner has been unable to find any cases that have dishonesty and fraud upon the court of anywhere near this magnitude.

VIII. THIS WRIT WILL BE IN AID OF THE COURT'S APPELLATE JURISDICTION, AND THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS. ADEQUATE RELIEF CANNOT BE OBTAINED FROM ANY OTHER COURT.

Windsor filed motions for recusal in the District Court. Judge Evans denied them, ignored them, and did not even allow the Clerk of the Court to file the latest one that Windsor presented. Judge Evans is hopelessly biased against Windsor, and no relief is available from her.

Windsor filed an appeal of Judge Evans' refusal to recuse herself as well as a petition for writ of mandamus to disqualify Judge Evans with the Eleventh Circuit, and no explanation whatsoever was given for the denial. (See Eleventh Circuit Appeal No. 09-13086-DD and 09-16494-A.) So, relief cannot be obtained from the Eleventh Circuit.

Windsor is pro se, and he is interpreting ***Marbury v. Madison***, 1 Cranch 137, 175 when it says "it must be shown to be an exercise of appellate jurisdiction" to mean that Windsor must show that this is in essence an appeal. Windsor believes it qualifies as he attempted to have Judge Evans disqualified at both the District Court and Eleventh Circuit. Windsor has further read that the recusal of a judge can only be handled through mandamus.

Windsor respectfully submits that there is nothing that qualifies as "exceptional circumstances" more than a biased, corrupt federal judge.

Windsor is attempting to avoid financial and personal devastation by stopping these judges from forcing him to file bankruptcy.

CONCLUSION

As distasteful as it will be for this Court to acknowledge corruption and criminal acts with federal judges in Atlanta, Georgia, this Court must do so. To do otherwise will violate every oath that the justices have ever taken.

There is NOTHING whatsoever right with any of the decisions of the district courts and the Eleventh Circuit in this and related matters. The facts are that Windsor has always been totally in the right. The law provides that Windsor should have always prevailed on every meaningful issue. Judge Evans intentionally, criminally violated the law again and again.

Judge Duffey and the judges of the Eleventh Circuit have knowingly violated the law and the rules to protect Judge Evans from criminal prosecution and impeachment. There is nothing legally, ethically, or morally right about what these judges have done.

For all the above reasons, the Petitioner now respectfully prays that this Court grant a Writ for Mandamus to Disqualify Judge Evans and reopen Civil Action No. 1:06-CV-0714-ODE.

This Court should ask the House and Senate Judiciary Committees to investigate the federal judiciary in Atlanta.

This Court should remand this matter to a different circuit where Windsor's Constitutional rights might be honored.

Under the circumstances, recusal is the only remedy that will promote the public's faith in the integrity and fairness of the federal judicial system, prompt other judges to handle motions for recusal properly, restore impartiality to the parties in the judicial process, and secure the relief that the Petitioner deserves.

FINAL NOTE FROM THE PETITIONER

May it please the Court. Please review the "Final Note from the Petitioner" in Windsor's Petition for Writ of Mandamus to Disqualify Judge William S. Duffey, pages 43-45. This Court must come to believe that I am the one telling the truth, and the judges are among those telling lies. Every word I have sworn to is the truth, the whole truth, and nothing but the truth.

As hard as it may be for fellow federal judges to accept that a peer has committed serious judicial misconduct, I pray that personal feelings and doubt can be put aside to review the evidence because there has been a grave miscarriage of justice.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge, except as to the matters herein stated to be alleged

on information and belief, and that as to those matters I believe them to be true.

Respectfully submitted this 18 day of November, 2010,

William M. Windsor
Pro Se